THE DEVELOPMENT BANK OF SINGAPORE LTD

v.

LIM GAIK TONG

HIGH COURT MALAYA, PENANG
RK NATHAN J
[ORIGINATING SUMMONS NO: 24-1952-1999]
6 FEBRUARY 2002

CIVIL PROCEDURE: *Stay of proceedings - Stay of proceedings pending appeal - Whether ought to be allowed*

This was the defendant's application for all execution and enforcement proceedings in this action to be stayed, until the defendant's appeal to the Court of Appeal against this court's decision dismissing the defendant's application in encl. 9 is heard.

Held:

[1] Although the plaintiff had, in an extracted order dated 19 January 2000, included a rate of conversion of US$1 to RM3.80 as at the date of making the order, that is, as at 19 January 2000, the court was moved to grant a stay as there was merit in the defendant's argument that the rate of exchange ought to be as of the date of the original order made in Singapore, that is as at 14 May 1999. (p 555 d-e)

[Application allowed.]

Case(s) referred to:
Re Raju Jayaraman Kerpaya ex p Associated Asian Securities (Pte) Ltd [1999] 5 CLJ 23 ***(refd)***

Legislation referred to:
Reciprocal Enforcement of Judgment Act (1958) Amendment 1972, s. 4(2)
Rules of the High Court 1980, O. 45 r. 11, O. 67 rr. 5(1), 10

For the plaintiff/respondent - Karin Lim (Dominic Pillai); M/s Presgrave & Matthews
For the defendant/Appellant - VM Mohan (Abdul Fareed & N Shanmugam); M/s VM Mohan Fareed & Co

Reported by Suresh Nathan

JUDGMENT

RK Nathan J:

Facts

This is the defendant's application (encl. 14) for:

(a) leave to apply

(b) extension of time to file this application.

(c) all execution and enforcement proceedings in this action to be stayed until the defendant's appeal to the Court of Appeal against this court's decision given on 27 January 2001 in respect of encl. 9 whereby the defendant's application for an order:

(i) that the service of the order of court dated 19 January 2000 and the notice of registration of a foreign judgment dated 22 February 2000 be set aside and

(ii) that the registration of the judgment of the High Court of the Republic of Singapore dated 14 May 1999 registered as judgment in the High Court of Malaya in Pulau Pinang pursuant to an order dated 19 January 2000 be set aside.

(iii) Further or in the alternative that the execution of the judgment of the High Court of Singapore dated 14 May 1999 pursuant to the notice of registration of foreign judgments dated 22 February 2000 and the order of this court dated 19 January 2000 be stayed until determination of this application or in the alternative until further order.

(iv) that the plaintiff be ordered to provide security for costs of all proceedings in respect of the setting aside of the registration of the said judgment.

(v) that the costs of this application to be taxed and paid for by the plaintiff be formally determined; and in the alternative.

(d) all execution and enforcement proceedings in this action to be stayed pursuant to the provision of O. 67 r. 10 of the Rules of the High Court 1980 (the RHC) and/or O. 45 r. 11 of the RHC and/or s. 4(2) of the Reciprocal Enforcement of Judgment Act (1958) Amendment 1972, and/or the inherent jurisdiction of this court.

(e) costs of this application to be costs in the cause.

(f) further or other relief deemed fit by this court.

The learned judge who heard encl. 9 dismissed it with costs and refused an oral application for stay and directed the defendant to file a formal application which the defendant duly did as encl. 14. On 7 August 2001 having heard the said application I allowed the defendant's prayers (c) and (e).

This is the plaintiff's appeal to the Court of Appeal against my decision.

The notice of appeal was dated 5 September 2001. However, the plaintiff's solicitors, instead of forwarding their letter requesting the notes of evidence and grounds of judgment to my secretary, directed the said letter dated 5 September 2001 to the learned senior assistant registrar (SAR). Upon enquiries being made it has been ascertained that this letter was not even delivered to the learned SAR but to the clerk who merely put it into the file. Subsequently on 18 January 2002 the plaintiff's solicitors wrote a letter to my secretary reminding him of the plaintiff's solicitors letter dated 5 September 2001. It was only then that this court was appraised of this appeal. This mistake on the part of the plaintiff's solicitors has caused a delay in the writing of this judgment.

Findings Of The Court

The plaintiff filed encl. 2 an *ex parte* application and prayed for an order that the judgment dated 14 May 1999 of the High Court of Singapore whereby it was adjudged that the plaintiff do recover against the defendant the sum of (1) US $1,566,701.28, (2) interest thereon at 5% p.a. above the plaintiff's prime lending rate and the Singapore Inter-bank offer rate calculated on a daily basis and based on 365 days and with monthly rests from 26 August 1998 to the date of payment, (3) monthly service charges at such rates as determined by the plaintiff from the month of August 1998 till the date of payment and (4) costs to be taxed on a solicitor and client basis, be registered as a judgment in the High Court of Malaya at Penang pursuant to the Reciprocal Enforcement of Judgment Act 1958 (Revised 1972) and O. 67 of the RHC and that the defendant do pay the costs and for such other relief deemed fit by the court.

On 19 January 2000 my learned brother Wan Adnan J granted the *ex parte* order.

In *Re Raju Jayaraman Kerpaya ex p Associated Asian Securities (Pte) Ltd* [1999] 5 CLJ 23 Abdul Hamid Mohamed J (as he then was) held that an application to register a judgment obtained in a foreign court to the Malaysian High Court may be made *ex parte* or *inter partes*. His Lordship went on to hold that the court must make an order in Form 145 as required under O. 67 r. 5(1) of the RHC, giving leave to register the judgment. The order must be drawn up and served on the judgment debtor. The order must state the period within which the judgment debtor may apply to set aside the registration. It

must also contain a notification that execution will not issue until the expiration of that period. Further, a notice of such registration must be served on the judgment debtor followed by an endorsement by the person who serves it. If it is not endorsed, the judgment creditor may not issue execution on the judgment without leave of the court. An affidavit of service should be filed and it must state the date on which the notice was endorsed. Then, the judgment debtor may apply to set aside the registration. When the plaintiff in this case drew up the actual order in respect of encl. 2, the plaintiff included two further orders which were not in the order granted by Wan Adnan J.

The additional prayers the plaintiff had included in the extracted order but not contained in the order granted by the court on 19 January 2000 are (1) that the defendant do pay the plaintiff a sum of US $1,812,227.15 or RM6,886,465.07 (at an exchange rate of US 1$ to RM3.80) as at the date of judgment ie, 19 January 2000; (2) that the defendant be at liberty, within 14 days from the date of the judgment to apply to set aside the judgment.

Whilst Karin Lim for the plaintiff argued that all issues had already been dealt with before my learned brother who heard encl. 9, I must say that one issue raised by the defence has moved me to granting a stay. It seems to me that the plaintiff had in the order dated 19 January 2000 included a rate of conversion at US 1$ to RM3.80 as at the date of making the order that is, as at 19 January 2000. I am of the view that there is merit in the defendant's argument that the rate of exchange ought to be as of the date of the original order made in Singapore, that is as at 14 May 1999. I therefore granted an order in terms of prayers 1(c) and (e) of encl. 14.